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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MYLON DRANOEL DOAKES,

Defendant and Appellant.

D054617

(Super. Ct. No. SCD165916)

APPEAL from a judgment of the Superior Court of San Diego County, Roger W. Krauel, Judge. Affirmed.

Mylon Dranoel Doakes appeals from the decision of the trial court extending Doakes's commitment as a mentally disordered offender (MDO) pursuant to Penal Code¹ section 2972. Doakes contends the trial court erred when it denied his petition to dismiss the petition to extend commitment on the grounds of lack of jurisdiction since his commitment offense does not qualify for MDO treatment. We find the trial court properly denied the motion to dismiss because the commitment offense was a crime

¹ All further statutory references are to the Penal Code unless otherwise specified.

involving force and violence under section 2962, subdivision (e)(2)(P). We therefore affirm the judgment.

STATEMENT OF FACTS

Doakes does not dispute that he qualifies as a MDO as it relates to his mental condition and need for treatment. The challenge here relates solely to whether his conviction for felony vandalism qualifies as an offense for which Doakes can be committed as a MDO. Accordingly we will only provide a brief summary of the events surrounding the commission of the crime for which Doakes was originally committed.

The events leading to Doakes's conviction occurred in February 2002. On February 22, 2002, Doakes wanted to move back to his parents' home. When Doakes's father refused to allow him to return to the family home, Doakes became angry and threatening.

On February 26, 2002, Doakes returned to the family home. Doakes was refused entry by his mother. Doakes became angry and threatening again. His mother and her two daughters retreated to the laundry room where the mother could call the police. Doakes then threw bricks through the front window of the house. When police arrived they found Doakes's mother and the children terrified and huddled together in fear for their safety. Doakes pled guilty to felony vandalism and was sentenced to prison.

In September 2008 the District Attorney filed a petition under sections 2970 and 2972 seeking to extend Doakes's MDO commitment. The trial on the petition was held on December 17, 2008. After the court denied the motion to dismiss the petition, he

submitted the case on the reports. The court thereafter sustained the petition and ordered that Doakes's MDO commitment be extended to December 25, 2009.²

DISCUSSION

In order for a person to be found to be a MDO such person must have been convicted of a qualifying offense. Section 2962, subdivision (e)(2)(A-O) contains a list of violent or dangerous offenses, which qualify a person for MDO consideration. Felony vandalism under section 594, subdivision (a) is not one of the listed offenses. However, subdivision (e)(2)(P) provides: "(e) The crime referred to in subdivision (b) meets both of the following criteria: [¶] . . . [¶] (2) The crime is one of the following: [¶] . . . [¶] (P) A crime not enumerated in subparagraphs (A) to (O), inclusive, in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (4) of subdivision (f) of Section 243." Subdivision (e)(2)(Q) provides: "(e) The crime referred to in subdivision (b) meets both of the following criteria: [¶] . . . [¶] (2) The crime is one of the following: [¶] . . . [¶] (Q) A crime in which the perpetrator expressly or impliedly threatened another with the use of force or violence likely to produce substantial physical harm in such a manner that a reasonable person would believe and expect that the force or violence would be used. For purposes of this subparagraph, substantial physical harm

² The extension of the commitment has expired. The record does not reveal whether Doakes has been recommitted. We do not treat the issue as moot because it addresses the question of whether the trial court had jurisdiction to extend the commitment. Thus it is an issue that may recur and the one-year commitment process makes it difficult for a person to obtain appellate review in a timely fashion.

shall not require proof that the threatened act was likely to cause great or serious bodily injury."

Doakes contends that since vandalism only involved the use of force against property it does not qualify under section 2962. While we agree that mere destruction of property does not qualify under section 2962, we are satisfied that the crime here involved direct and implied threats of injury to others and that the act of throwing bricks through the window of the occupied dwelling under the circumstances of this case does fall within subdivisions (e)(2)(P) and (Q).

Doakes relies primarily on two cases to support his argument, *People v. Green* (2006) 142 Cal.App.4th 907, 913 (*Green*) and *People v. Kortesmaki* (2007) 156 Cal.App.4th 922, 928-929 (*Kortesmaki*). Both cases were decided by the same division of the Second District Court of Appeal. We do not believe either case supports Doakes's contention.

In *Green, supra*, 142 Cal.App.4th 907, the defendant had been arrested by police. After he was placed in the police car Green became violent and kicked out one of the windows of the car. He was convicted of vandalism for the destruction of the car window. The appellate court reversed Green's MDO commitment because the only force or violence involved was directed at an inanimate object. The court held that the crime, as committed, did not fall within the catchall provision of subdivision (e)(2)(P). (*Green, supra*, at pp. 912-913.)

The present case is distinguishable from *Green, supra*, 142 Cal.App.4th 907. Here the violence was preceded immediately by threat, direct and implied to persons inside the

house. When Doakes threw bricks into the occupied dwelling he placed the lives of the known occupants at risk. It was fortuitous that his mother had fled to the laundry room and was not hit by the bricks thrown into the front window, near where she had been when she denied Doakes entry into the home. This is not the same type of crime as was involved in breaking the window of a police car.

Kortesmaki, supra, 156 Cal.App.4th 922, likewise is of no help to Doakes. In that case the defendant approached two men outside a store. The defendant had flammable liquids with him and indicated he was going to start a fire in the dumpster behind the store. The men reported it to the store clerk, who was able to put out the fire that the defendant had set before significant damage was done. The defendant was convicted of possessing combustible material with the intent to start a fire. (§ 453, subd. (a).) On appeal from an MDO commitment, Kortesmaki contended the offense did not qualify him for MDO treatment. The appellate court affirmed the commitment. While the court disagreed with the trial court's assessment that the crime fell within the catchall of section 2962, subdivision (e)(2)(P), the court found the crime did involve the threat of force or violence that was likely to produce substantial physical harm. (*Kortesmaki, supra* at pp. 926-927.) We think the *Kortesmaki* case supports the trial court's decision in the case before us.

As we have noted, Doakes's mother was present when he became angry and threatening because she would not let him enter her house. He hurled bricks through the window of the house where his mother and two daughters were located. While it is fortunate that the persons inside the house had retreated to another room in fear for their

safety, a reasonable person in their position would "believe and expect that the force or violence would be used." (§ 2962, subd. (e)(2)(Q).)

We are satisfied that the record before the trial court satisfied the MDO eligibility requirements of both subdivisions (e)(2)(P) and (Q) of section 2962, but in any event, there can be no doubt that the description of criminal conduct in the subdivision (Q) provisions was established.

Since Doakes submitted on all other aspects of his eligibility for extension of the MDO commitment, the trial court correctly granted the petition and extended the commitment for another year.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.